

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF MARYLAND

SHOREGOOD WATER COMPANY,  
INC., *et al.*

Plaintiffs,

v.

U.S. BOTTLING COMPANY, *et al.*,

Defendants.

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Civil Action No. RDB-08-2470

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OPPOSITION TO MOTION TO DISQUALIFY

Defendants U.S. Bottling Company, The Image Makers, Ltd., William G. Voelp, John David Cecil, and John T. Cecil, Jr., by their undersigned counsel, oppose the Motion to Disqualify John A. Bourgeois, Esquire and Kramon & Graham, P.A., as Counsel to US Bottling Company ("Motion to Disqualify") by Plaintiffs ShoreGood Water Company, Inc., Dennis S. Kellough, Bonnie M. Kellough and Dennis S. Kellough to the use of US Bottling Company, and state as follows.

1. The Motion to Disqualify is premature. The factual premise of Plaintiffs' motion is that the existence of derivative claims in Plaintiffs' Complaint create a conflict between the interests of U.S. Bottling Company and the interests of The Image Makers, Ltd., William G. Voelp, John David Cecil, and John T. Cecil, Jr. This conflict, Plaintiffs say, requires John A. Bourgeois, Esquire and Kramon & Graham, P.A. to withdraw as counsel to U.S. Bottling Company.

2. The Motion to Disqualify is premature because Defendants have moved to dismiss Plaintiffs' derivative claims. Defendants contend in their Motion to Dismiss that, among other things, Plaintiffs lack standing to assert derivative claims against U.S. Bottling Company. If Defendants are correct, which they believe they are, and this Court dismisses the derivative claims from the Complaint, the Motion to Disqualify will be moot. The Motion to Disqualify, therefore, is not ripe until after this Court resolves Defendants' Motion to Dismiss.

3. Ironically, Plaintiffs' Motion to Disqualify demonstrates precisely why Plaintiffs are unfit to represent the interests of U.S. Bottling Company. Plaintiffs, through their motion, seek to strip from U.S. Bottling Company its counsel, thereby leaving it unrepresented and subject to a default motion. Such an outcome is clearly not in the best interest of U.S. Bottling Company and reveals that Plaintiffs, because they are the proponents of this strategy, are unfit to represent U.S. Bottling Company's interests.

4. Defendants acknowledge that in the event this Court does not dismiss Plaintiffs' derivative claims, the controlling authority suggests that U.S. Bottling Company should obtain separate counsel.

5. For the foregoing reasons, this Court should deny Plaintiffs' Motion to Disqualify as premature. Alternatively, this Court should rule on the Motion to Disqualify after ruling on Defendants' Motion to Dismiss.

Respectfully submitted,

/s/ George E. Brown

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Attorneys for Defendants

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 20<sup>th</sup> day of January, 2009, the foregoing  
Opposition to Motion to Disqualify was filed via ECF and sent to:

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/s/ George E. Brown